

BILL BRADBURY
SECRETARY OF STATE

JOHN LINDBACK
DIRECTOR

141 STATE CAPITOL
SALEM, OREGON 97310-0722
ELECTIONS—(503) 986-1518

BEFORE THE SECRETARY OF STATE
OF THE
STATE OF OREGON

In the matter of a Late Contribution and Expenditure Report)
by Friends of Vicki Berger, Vicki Berger, Candidate,) Final Order by Default
Chuck Swank, Treasurer, for the First Supplement to the)
Second Pre-Election for the November 2, 2004, General) Case No. L8149
Election)

October 28, 2005

Friends of Vicki Berger (004112)
Vicki Berger, Candidate / Chuck Swank, Treasurer
805 Kingwood Dr NW
Salem, OR 97304

Dear Representative Berger:

This is a Final Order by Default issued by the Secretary of State (secretary) for your failure to file a timely first supplement to the second pre-election contribution and expenditure report for the November 2, 2004, General Election.

On August 19, 2005, the secretary notified Friends of Vicki Berger (committee), pursuant to ORS 260.232(2), that it had failed to file the report and that the secretary may impose a civil penalty. An opportunity for a hearing was provided in that notice; however, no request for a hearing was received by the secretary within the time permitted in the notice. Accordingly, after consideration of the records and files of the secretary regarding this matter, the secretary is entering the following Order.

FINDINGS OF FACT

1. The committee's Statement of Organization (SEL 220), applicable during the reporting period, was filed with the secretary on November 26, 2003. The statement reported Chuck Swank as the treasurer and 805 Kingwood Dr NW, Salem, OR 97304 as the mailing address for both candidate and committee correspondence.
2. The committee submitted a timely first supplement to the second pre-election report on October 25, 2004. However, an additional contribution (\$550.00 from IBEW Educational Committee on October 19, 2004) should have been included on the report.
3. The committee first reported the contribution required to be included on the first supplement to the second pre-election report on its post-election report filed on December 2, 2004, making this portion of the report 26 business days late.

4. On August 19, 2005, the secretary sent the committee a Notice of Proposed Civil Penalty. The notice was sent by both certified and first class mail to the candidate and was sent by first class mail to the treasurer at the above-referenced address. The notice proposed a civil penalty of \$100.00 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was received and signed for by Vicki Berger on August 22, 2005.
5. The committee did not request a public hearing or submit notarized testimony in lieu of a public hearing.
6. The secretary has record of no previous late filings during the two-year period beginning September 15, 2003.

ULTIMATE FINDINGS OF FACT

Vicki Berger, Candidate, and Chuck Swank, Treasurer, failed to file a timely first supplement to the second pre-election contribution and expenditure report for the November 2, 2004, General Election.

CONCLUSIONS OF LAW

Candidate Vicki Berger's and Treasurer Chuck Swank's failure to file a timely first supplement to the second pre-election contribution and expenditure report for the November 2, 2004, General Election violated ORS 260.068.

By statute, a maximum \$10,000 civil penalty may be imposed for this violation. The *2004 Campaign Finance Manual*, which contains a penalty calculation matrix on pages 101 and 102, is designated in OAR 165-012-0005 as the procedure manual for Oregon campaign finance regulations.

Under the penalty matrix, the maximum statutory penalty of \$10,000 is reduced to 1% of the total contributions or total expenditures—whichever is greater—for each business day the report was late as this is the first late violation by the candidate.

Although the calculated penalty for the late report is \$143.00 ($\$550.00 \times 1\% \times 26$ days), the penalty matrix sets a maximum penalty of \$100.00 when the total contributions or total expenditures—whichever is greater—is between \$0 and \$2,000.

ORDER

Payment of the proposed civil penalty of \$100.00 was received in the office of the Secretary of State on September 15, 2005. This Order will serve as your receipt and this matter is now considered closed.

RIGHT TO JUDICIAL REVIEW

You have the right to appeal this Order to the Oregon Court of Appeals pursuant to ORS 183.482. To appeal you must file a petition for judicial review with the Court of Appeals within 60 days from the day this Order was served to you. Because this Order was mailed to you, the date of service is the day it was *mailed*, not the day you received it. If you do not file a petition for judicial review within the 60-day time period, you will lose your right to appeal.

Jennifer Hertel, Compliance Specialist

DATE of Service: _____

c: Chuck Swank, Treasurer
805 Kingwood Dr NW
Salem, OR 97304